

**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

**H-1. KEY PERSONNEL**

H-1.1. The NQMC shall maintain and provide to the TMA COR the resumes of key personnel (as defined by the NQMC) to this contract. Any key personnel replacement shall be at least as well qualified as the individual originally holding the position vacated and the NQMC must receive Government approval to change such key personnel. The NQMC shall ensure that its staff and subcontractors (if any) are thoroughly trained and knowledgeable regarding the NQM program and the requirements of this contract.

H-1.2. The resumes must contain the individuals' name, mailing address, phone number, e-mail address, education, and experience.

**H-2. DISSEMINATION OF INFORMATION**

There shall be no dissemination or publication, except within and between the NQMC, subcontractors, and the TRICARE Management Activity (TMA) of information developed under this contract or contained in the reports to be furnished pursuant to this contract without prior written approval from the Contracting Officer.

**H-3. PRIOR CONSENT TO SUBCONTRACTS REQUIRED**

The NQMC may enter into any subcontract which is necessary for the performance of this contract subject to compliance with appropriate contract clauses and terms. The NQMC shall not enter into any new subcontract with third parties to perform any of the tasks, functions, and duties set forth in Section C, without the prior written consent of the Contracting Officer. However, this requirement shall not apply if the Contracting Officer has approved the NQMC's purchasing system pursuant to procedures detailed in FAR Subpart 44.3 and DFARS 244.3. Copies of executed subcontracts shall be submitted to the Contracting Officer upon request. The NQMC must also follow the provisions of Section I, FAR 52.244-1 and 52.244-5.

**H-4. CONFLICT OF INTEREST**

H-4.1. The NQMC's attention is directed to FAR Subpart 9.5, "Organizational and Consultant Conflicts of Interest."

H-4.2. Services required by the Government include tasks in which the NQMC and/or its personnel and subcontractor(s), shall review care managed by the Managed Care Support Contractors (MCSCs) and their subcontractor(s), and claims processed, or to gain access to procurement sensitive information as defined by Title 41 United States Code, Section 423. Such task(s) may include, but are not limited to personal and substantial involvement in the support of subsequent competitive acquisitions for services with payment of the services by appropriated funds.

H-4.3. In order to avoid any organizational conflict of interests, or the appearance thereof, the NQMC agrees as a condition of award, that it shall not offer in response to any solicitation, nor shall it be eligible for award of any contract, nor serve as a consultant or subcontractor to a MCSC, DP, TDEFIC, or other TMA contractor, perform TMA Claims Processing or to perform utilization review for a MCSC.

H-4.4. This restriction shall remain in effect for a period of 6 months from the date of final acceptance of all work under this contract and shall apply as well to any subsidiary, affiliate, joint venture, merged party, successor or assignee of the NQMC.

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**H-5. CONFIDENTIALITY**

H-5.1. All beneficiary records used in any way by the NQMC must be protected as required by the Freedom of Information Act, the Privacy Act of 1974, the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and Title 10 USC 1102. Beneficiary records must be protected, in terms of privacy and security during use, transmission, storage, destruction, and handling. The NQMC agrees to all provisions of the Business Associate Addendum (Attachment J-12, Section J).

H-5.2. Under the Privacy Act, it takes a court order for TMA records to be released. A subpoena for TMA records is not sufficient for release. The NQMC shall forward all subpoenas for documents that encompass any TMA records to the COR for coordination of release with the TMA, Office of General Counsel (OGC). The COR shall coordinate release or nonrelease with the TMA/OGC and notify the NQMC in writing the determination of the TMA/OGC. The NQMC shall not release any TMA records without approval of the TMA/OGC.

**H-6. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REQUIREMENTS**

H-6.1. The NQMC shall comply with all applicable state insurance and license requirements necessary for performance under this contract except where preempted by Federal law. Both the Department of Defense Appropriations Act, 1994 (Public Law 103-139) and the Defense Authorizations Act for Fiscal Year 1994 (Public Law 103-160) (codified at 10 USC 1103) provide for preemption of state and local laws that relate to health insurance, prepaid health plans, or other health care delivery or financing methods. In order to identify those state and local laws that should be preempted, the NQMC is directed to notify the Contracting Officer of those state and local laws the NQMC deems should be preempted, with supporting documentation. This notification should be provided no later than 30 days after award of the contract.

H-6.2. In addition to the insurance and license requirements, the NQMC, consultants, and providers shall obtain and maintain all other permits, licenses, etc., that may be required to perform the services set forth in Section C.

**H-7. TECHNICAL DATA**

The data contained in all reports shall be owned by the Government.

**H-8. ORDERING**

All orders shall be authorized by issuance of a delivery order to the contract by the Contracting Officer.

**H-9. SPECIAL PROVISION - PRIVACY OF PROTECTED HEALTH INFORMATION**

**H-9.1. Definitions.** As used in this Provision:

- *Individual* has the same meaning as the term ``individual'' in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- *Protected Health Information* has the same meaning as the term ``protected health information'' in 45 CFR 164.501, limited to the information created or received by the contractor from or on behalf of The Government.

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- *Required by Law* has the same meaning as the term ``required by law'' in 45 CFR 164.501.
- *Secretary* means the Secretary of the Department of Health and Human Services or his/her designee.
- Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

**H-9.2.** The contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.

**H-9.3.** The contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

**H-9.4.** The contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of Protected Health Information by the contractor in violation of the requirements of this Contract.

**H-9.5.** The contractor agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Contract.

**H-9.6.** The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the contractor on behalf of the Government agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

**H-9.7.** The contractor agrees to provide access, at the request of the Government, and in the time and manner designated by the Government to Protected Health Information in a Designated Record Set, to the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 CFR 164.524.

**H-9.8.** The contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 CFR 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

**H-9.9.** The contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the contractor on behalf of, the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

**H-9.10.** The contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

**H-9.11.** The contractor agrees to provide to the Government or an Individual, in time and manner designated by the Government, information collected in accordance with this Provision of the Contract, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

**H-9.12.** General Use and Disclosure Provisions

**H-9.12.1.** Except as otherwise limited in this Provision, the contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the Government for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the

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Department of Defense Health Information Privacy Regulation if done by the Government: For all purposes necessary for performance of this contract.

**H-9.13. Specific Use and Disclosure Provisions**

**H-9.13.1.** Except as otherwise limited in this Provision, the contractor may use Protected Health Information for the proper management and administration of the contractor or to carry out the legal responsibilities of the contractor.

**H-9.13.2.** Except as otherwise limited in this Provision, the contractor may disclose Protected Health Information for the proper management and administration of the contractor, provided that disclosures are required by law, or the contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

**H-9.13.3.** Except as otherwise limited in this Provision, the contractor may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 CFR 164.504(e) (2) (i) (B).

**H-9.13.4.** The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

**H-9.14. Obligations of the Government**

**H-9.14.1. Provisions for the Government to Inform the contractor of Privacy Practices and Restrictions**

**H-9.14.1.1.** Upon request the Government shall provide the contractor with the notice of privacy practices that the Government produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

**H-9.14.1.2.** The Government shall provide the contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the contractor's permitted or required uses and disclosures.

**H-9.14.1.3.** The Government shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 CFR 164.522.

**H-9.15. Permissible Requests by the Government**

**H-9.15.1.** The Government shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the contractor as otherwise permitted by this Provision.

**H-9.16. Termination:** A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

**H-9.16.1.** If this contract has records management requirements, the records subject to the Provision should be handled in accordance with the records management requirements. If this contract does not have records management requirements, the records should be handled in accordance with H-9.16.2 and H-9.16.3 below.

**H-9.16.2.** If this contract does not have records management requirements, except as provided in H-9.16.3 of this section, upon termination of this Contract, for any reason, the contractor shall return or destroy all Protected Health Information received from the Government, or created or received by the contractor on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the

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contractor. The contractor shall retain no copies of the Protected Health Information.

**H-9.16.3.** If this contract does not have records management provisions and the contractor determines that returning or destroying the Protected Health Information is infeasible, the contractor shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the contractor that return or destruction of Protected Health Information is infeasible, the contractor shall extend the protections of this Contract to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the contractor maintains such Protected Health Information.

**H-9.17. Miscellaneous**

**H-9.17.1.** Regulatory References. A reference in this Provision to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

**H-9.17.2.** Survival. The respective rights and obligations of Business Associate under the Termination terms at H-9.16 of this Provision shall survive the termination of this Contract.

**H-9.17.3.** Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Privacy Rule.

**H-10. SPECIAL PROVISION - SECURITY OF PROTECTED HEALTH INFORMATION**

**H-10.1.** *Definitions.* As used in this Provision:

- *Electronic Protected Health Information has the same meaning as the term "electronic protected health information" in 45 CFR 160.103.*
- *Secretary means the Secretary of the Department of Health and Human Services or his/her designee.*
- *Security Rule means the Security Standards for the Protection of Electronic Protected health Information at 45 CFR part 160 and part 164, subpart C.*
- *Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103, 164.103, and 164.304.*

**H-10.2.** The contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government.

**H-10.3.** The contractor agrees to report to the Government any security incident of which it becomes aware.

**H-10.4.** The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

**H-10.5.** The contractor agrees to make internal practices, books, and records relating to the security of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Security Rule.

**H-10.6.** Termination: A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

**H-10.7. Miscellaneous**

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**H-10.7.1.** Regulatory References. A reference in this Provision to a section in the Security Rule means the section as in effect or as amended, and for which compliance is required.

**H-10.7.2.** Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Security Rule.

(End of Section)